IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Arbitration Application No. 01 of 2006

M/s World Wide Dot Com Ltd.
Through its Authorized Representative
Mr. Rupesh Bargoti having its office
IInd Floor, Kumar Banquet Hall
Chandra Charya Chowk
Ranipur More, Haridwar, Uttaranchal

……Applicant.

Versus

1. Bharat Sanchal Nigam Ltd.
   Sanchar Bhawan, 20 Ashoka
   Road, New Delhi Also at B- 149
   Stateman Building, Barakhamba Road
   New Delhi.
2. The Chief General manager (C.G.M.)
   Uttaranchal, Bharat Sachar Nigam Ltd.
   Windlass Complex, Rajpur Road
   Dehradun.
3. General Manager, Telephone Exchange, Bharat
   Sanchar Nigam Ltd. Patel Nagar
   Dehradun. ……Respondents.

Shri Jitendra Chaudhary, learned counsel for the applicant
Assistant Solicitor General for the respondents.

Hon'ble Prafulla C. Pant, J.

This petition has been moved under Section 11 of the Arbitration and Conciliation Act, 1996, whereby request has been made for appointment of Arbitrator by the petitioner.

2. Heard learned counsel for the parties.

3. Admittedly there is an Arbitration Clause in the agreement between the parties, which reads as under:-

"Any question, dispute or difference arising out of or in connection with this agreement or breach, termination or validity hereof, shall be first endeavored to be settled through friendly discussion or negotiations between the parties. If the dispute cannot be amicably settled either party, as soon as practicable, but not earlier that three months after a request to settle the dispute amicable has been made to the other party, give to the other party note in writing or existence of such question, dispute or difference, specifying the nature and the point at issue, and the same shall be finally settled by Arbitration conducted in Dehradun Act 1996 any modifications or reenactments thereto and relevant laws and regulations in force at that time in India. All such disputes and differences which may arise between the parties hereto as to the meaning, construction or effect of any of the terms and provisions of this agreement or as to the right or claim of either party under this agreement shall be referred to the sole arbitration of the Chief General manager Telecom UP (W), BSNL or his nominee including any officer of Bharat Sanchar Nigam Limited (BSNL) nominated by him and the Dealer shall not raise any objection to such arbitration on the ground that the arbitrator is an officer of Bharat Sanchar Nigam Limited (BSNL) and as such in an interested party or that the Arbitrator so appointed has earlier dealt with the subject matter of

this agreement. Any order/Directions/Awards of the Arbitrator shall be final and binding on both the parties. The arbitration proceedings shall take place in Dehradun and will be governed by the provisions of The Arbitration and Conciliation Act 1996 or of any statutory amendment thereto or any reenactment thereof for the time being in force. The Arbitrator so appointed shall pass a speaking award. The Courts at Dehradun shall have exclusive jurisdiction under this agreement."

4. The point in dispute sought to be referred is that respondent No. 1 since allegedly failed to perform contractual obligations in supplying relevant data and information to the petitioner due to which the petitioner suffered loss to the tune of Rs. 1,13,57,220/- out of which only Rs. 3,50,000/- were paid by the respondents.

5. On behalf of the respondents, it is submitted by the learned counsel that the petitioner has not taken steps for conciliation and did not send his bills through the nodal agency. As to the conciliation, learned counsel for the petitioner pointed out from the annexures filed with this petition that he did approach for clearance of his bills time and again and the respondents did not respond to it.

6. The parties are not agreeable to any single name acceptable to them. Some senior officer of B.S.N.L.

who knows the intricacies of the work and the rates claimed in the bill wound, be appropriate person who can decide the claims in a better way.

7. In the above circumstances, considering the arbitration clause between the parties and the dispute, which is cognizable by the arbitrator, the application for appointment of Arbitrator is allowed with the direction that Shri Mahendra Kumar, Chief General manager, Telecom, Uttaranchal Circle, Dehradun is hereby appointed Arbitrator who shall enter within one month from today into the dispute raised by the petitioner and deliver his award within six months thereafter.

(Prafulla C. Pant, J.)

Dt: 07.08.2006
Sweta